APPEAL NO. 021683
FILED AUGUST 7, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on May 23, 2002. The hearing officer resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable repetitive trauma injury, with a _____, date of injury, and did not have disability. On appeal, the claimant expresses disagreement with these determinations. Additionally, she contends that she was not allowed to completely present her evidence at the hearing; that the respondent's (carrier) sole witness was not credible and, therefore, the hearing officer's reliance on his testimony resulted in an erroneous decision; and that the hearing officer erred in finding that the first day upon which the claimant was unable to obtain and retain employment due to the claimed injury was on _____. The respondent (carrier) urges affirmance.

DECISION

We affirm the hearing officer's decision as reformed.

In deciding whether the hearing officer's decision is sufficiently supported by the evidence, we will only consider the evidence admitted at the hearing. We will not generally consider evidence that was not admitted into the record and raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that the case be remanded for further consideration, we consider whether it came to appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that to be the case with the report attached to the claimant's appeal, which was not offered into evidence at the hearing and clarifies the results of a test performed in December 2001. Therefore, we decline to consider the report on appeal.

The claimant asserts that the hearing officer inaccurately states in Finding of Fact No. 7 that the starting date upon which she was unable to obtain or retain employment due to the claimed injury was _____. We agree that the record indicates that the claimant was recovering from an unrelated injury until March 17, 2002. Finding of Fact No. 7 is hereby reformed to reflect that the claimant was unable to obtain or retain employment as a result of the pain in her hands and fingers beginning March 18, 2002, and continuing through May 14, 2002. However, we note that this reformation has no effect on the determination that the claimant did not have disability.

The claimant asserts that the hearing officer did not allow her to "tell everything I knew while I was on the witness stand" and implies that she was not given enough time with the ombudsman to thoroughly prepare her case. Prior to the presentation of the evidence, the hearing officer asked the claimant if she was satisfied that she had been given sufficient opportunity to avail herself of the ombudsman's assistance in preparing for the hearing. The claimant responded affirmatively and added that she was prepared to go forward with the presentation of her case. We note that the record indicates not only that the claimant did not request permission to add additional testimony, but that in several instances, the hearing officer afforded her great latitude in responding at length to straight-forward questions. We find the claimant's complaints to be unsubstantiated.

With regard to the compensability determination, whether the claimant's activities were sufficiently repetitive to cause carpal tunnel syndrome was a factual determination for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), and resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer's determinations that the claimant did not sustain a compensable repetitive trauma injury and, consequently, did not have disability is supported by the evidence. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed as reformed.

The true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Michael B. McShane
Appeals Judge